

**COMMONWEALTH OF MASSACHUSETTS**

SUFFOLK, SS.

**CIVIL SERVICE COMMISSION**

One Ashburton Place: Room 503  
Boston, MA 02108  
(617) 727-2293

RICHARD HEATH,  
Appellant

v.

D-03-529

PEABODY POLICE DEPARTMENT,  
Respondent

Appellant's Attorney:

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Respondent's Attorney:

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Commissioner:

Christopher C. Bowman

**DECISION**

*Procedural Background*

The Appellant, Richard Heath (hereafter "Heath" or "Appellant"), pursuant to G.L. c. 31, § 43, filed a timely appeal with the Commission, claiming that the City of Peabody (hereafter "City" or "Appointing Authority") did not have just cause to suspend him for

ten (10) days as a police officer from the Peabody Police Department on November 26, 2003.

A full hearing was conducted on March 13, 2007 at the offices of the Civil Service Commission. As no written notice was received from either party, the hearing was declared private.

Ten (10) Exhibits were entered into evidence. The Appellant testified on his own behalf and Police Chief Robert L. Champagne testified on behalf of the Appointing Authority. One (1) tape was made of the hearing and both parties submitted post-hearing briefs in the form of proposed decisions.

#### *Factual Background*

There is no dispute that on June 17, 2003, the Peabody District Court, based on forty-seven (47) findings of fact, entered a ruling stating:

1. That Detective Richard Heath, a detective with 18 years of experience on the Peabody Police force, had knowledge that he was required to return to court to resume testifying on the *Kooskalis* matter on April 15, 2003 at 2:00 p.m.
2. That Detective Heath knowingly and intentionally absented himself from the court being well aware of his obligations to the Court.
3. That Detective Heath's actions were deliberate and demonstrated disrespect and total disregard to the Court and all parties involved in the *Kooskalis* matter.

(Exhibit 5 in Re: Richard Heath; Peabody District Court Docket No.0086 CR 1762A; Incorporated as part of this Decision)

Pursuant to the above-referenced ruling, the Court ordered Mr. Heath to "reimburse the City of Peabody for the cost of having two officers available for trial on April 14 and 15, 2003, and for their court appearance on May 14, 2003 as well as May 28, 2003. The Court orders reimbursement in the amount of Eight Hundred and Ten Dollars (\$810.00) to be paid on or before August 19, 2003." *Id* at page 4. The Appellant's then-counsel

filed a Motion for Reconsideration of the above-referenced Order which was denied on September 11, 2003. (Exhibit 6)

On January 10, 2006, the Appeals Court affirmed the Peabody District Court Order stating in part, “As the brief on behalf of the judge makes clear, the judge properly exercised his inherent authority to impose monetary sanctions against Heath due to his failure to appear as a witness.” Re: Richard Heath. 65 Mass. App. Ct. 1112 (2006).

Based primarily on the 2003 ruling from the Peabody District Court, the City of Peabody, after a full hearing, determined that the Appellant violated various rules and regulations of the Peabody Police Department, including failing to obey orders regarding trials and hearings and violation of policies and procedures related to testifying in Court, and suspended him for ten (10) days on November 26, 2003. (Exhibits 3 and 4)

The Appellant filed a timely appeal of this ten (10) day suspension with the Civil Service Commission. At the full hearing before the Commission, the Appellant sought to testify about the events which led to the above-referenced District Court Order, effectively challenging the basis for the Order. This Commissioner sustained the objection of the Appointing Authority regarding the admissibility of such testimony, ruling that the Appellant was precluded from litigating issues which he previously litigated unsuccessfully in the District Court.

*Argument of the Appointing Authority*

The Appointing Authority argues that the only issue that remains for the Commission is whether, based upon the facts established by District Court, there was reasonable justification for the action taken by the Appointing Authority, which they argue there was.

### *Argument of the Appellant*

The Appellant argues that the entire disciplinary process was both fatally flawed and violated his due process rights. Specifically, the Appellant argues that the Appointing Authority failed to indicate how much weight was given to various factors from the Appointing Authority hearing when making its decision; a fair and impartial investigation was not completed prior to the Appointing Authority hearing, including the absence of interviews with all relevant witnesses. Finally, in his post-hearing brief, the Appellant again seeks to re-litigate the issues from the District Court order, directly refuting findings made by the Court.

### *Conclusion Re: Due Process*

The first paragraph of G.L. c. 31, § 42 states, in its entirety:

“Any person who alleges that an appointing authority has failed to follow the requirements of section forty-one in taking action which has affected his employment or compensation may file a complaint with the commission. Such complaint must be filed within ten days, exclusive of Saturdays, Sundays, and legal holidays, after said action has been taken, or after such person first knew or had reason to know of said action, and shall set forth specifically in what manner the appointing authority has failed to follow such requirements. If the commission finds that the appointing authority has failed to follow said requirements and that the rights of said person have been prejudiced thereby, the commission shall order the appointing authority to restore said person to his employment immediately without loss of compensation or other rights.”

As a threshold matter, the Appellant’s December 1, 2003 appeal to the Commission did not include a due process appeal under G.L. c. 31, § 42. Rather, the written letter, which was accepted as a form of appeal by the Commission, specifically states, “Appeal G.L.c.31, Section 43” (underline in original) and is limited to the issue of whether the Appointing Authority had reasonable justification for imposing the ten (10) day suspension.

Even *assuming arguendo* that the Appellant had filed a Section 42 appeal with the Commission, the Appellant has not shown that the Appointing Authority failed to follow the due process requirements of the civil service law, which does not require what the Appellant asserts that it does, let alone that any alleged flaws prejudiced the Appellant.

*Conclusion Re: Reasonable Justification for Discipline*

The issue for the Commission is "not whether it would have acted as the appointing authority had acted, but whether, on the facts found by the commission, there was reasonable justification for the action taken by the appointing authority in the circumstances found by the commission to have existed when the Appointing Authority made its decision." Watertown v. Arria, 16 Mass. App. Ct. 331, 334 (1983). *See* Commissioners of Civil Serv. v. Municipal Ct. of Boston, 369 Mass. 84, 86 (1975) and Leominster v. Stratton, 58 Mass. App. Ct. 726, 727-728 (2003).

The Appellant's instant just cause appeal before the Commission rests on the contention that the Peabody District Court erred, both in its findings and rulings, related to the Appellant's conduct while serving as a witness in a criminal proceeding in April 2003. Through his own testimony, the Appellant sought to dispute the findings of the Court, which prompted an objection from the Appointing Authority, arguing that the Appellant was seeking to re-litigate issues which he already unsuccessfully litigated before. The Commission agrees. "When an issue of fact or law is actually litigated and determined by a valid and final judgment, and the determination is essential to the judgment, the determination is conclusive in a subsequent action between the parties, whether on the same or a different claim." McCarthy v. Town of Oak Bluffs, 419 Mass. 227, 233 (1994) (quoting Restatement (Second) of Judgments § 27 (1982)). Hence, the

findings of fact and rulings of the Peabody District Court have been incorporated as part of this decision.

The only remaining issue is whether the Appointing Authority, based primarily on the findings of the Peabody District Court Order, had reasonable justification to suspend the Appellant for ten (10) days. The Commission, like the Appointing Authority, has incorporated the Court's findings as part of its decision and concludes that the findings of the Court provided the Appointing Authority with reasonable justification to suspend the Appellant for ten (10) days. Further, the Appellant has not shown that the suspension in question was the result of political considerations, favoritism, or bias. In the absence of political considerations, favoritism, disparate treatment or bias, the Commission is not free to modify the penalty imposed by the town on the basis of essentially similar fact finding without an adequate explanation. Town of Falmouth v. Civil Service Commission, 447 Mass. 814, 826-27 (2006) quoting Police Comm'r of Boston v. Civil Serv. Comm'n, 39 Mass. App. Ct. 594, 600 (1996).

For all of the above reasons, the Appellant's appeal under Docket No. D-03-529 is hereby *dismissed*.

Civil Service Commission

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Christopher C. Bowman, Commissioner

By vote of the Civil Service Commission (Bowman, Guerin, Marquis, Taylor, Commissioners) on May 17, 2007.

A true record. Attest:

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Commissioner

Either party may file a motion for reconsideration within ten days of the receipt of a Commission order or decision. The motion must identify a clerical or mechanical error in the decision or a significant factor the Agency or the Presiding Officer may have overlooked in deciding the case. A motion for reconsideration shall be deemed a motion for rehearing in accordance with G.L. c. 30A, § 14(1) for the purpose of tolling the time for appeal.

Under the provisions of G.L. c. 31, § 44, any party aggrieved by a final decision or order of the Commission may initiate proceedings for judicial review under G.L. c. 30A, § 14 in the superior court within thirty (30) days after receipt of such order or decision. Commencement of such proceeding shall not, unless specifically ordered by the court, operate as a stay of the Commission's order or decision.

Notice:

Daniel B. Kulak, Esq. (for Appointing Authority)

G. Shepard Bingham, Esq. (for Appellant)